SUPREME COURT, U. S.

FILED

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1070

FRANK PETER BALISTRIERI, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR REHEARING

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PETITION FOR REHEARING

The petitioner, Frank P. Balistrieri, on the basis of the intervening circumstances hereinafter set forth, prays for rehearing of the Court's order of April 21, 1969, denying his petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT

1. Petitioner's counsel are also counsel for one Felix Antonio Alderisio, whose conviction this Court remanded, in *Alderman* v. *United States,* No. 133, October Term 1967, for a hearing in the United States

District Court for the District of Colorado on the effect of certain electronic eavesdropping which the Solicitor General admitted had been conducted against Alderisio. The time and place of the said electronic eavesdropping, which had not been specified by the Solicitor General in his admission to this Court, were to be determined in the hearing on remand. However, through the testimony of FBI Special Agent August C. Kempff in an unrelated case, *United States* v. *Joseph Y. Stein and Leonard P. Stallman,* No. 2523—Crim., United States District Court for the Central District of California, it had come to counsel's attention that the bugging of Alderisio included an illegal electronic surveillance conducted in certain premises at 645 North Michigan Avenue, Chicago, Illinois, from approximately October of 1964 to approximately April of 1965.

2. After the denial of the petition for a writ of certiorari herein, counsel met with their other client, Alderisio, to begin preparations for the hearing on remand of his case. In the course of preparation, counsel learned from Alderisio that this petitioner, Balistrieri, had been a frequent visitor in the bugged premises at 645 North Michigan Avenue during the period of the bugging and had then and there frequently conversed with Alderisio and others. In an attempt to verify this information, counsel communicated with Messrs. Simon, Sheridan, Murphy, Thorton and Medvene, of Los Angeles, California, counsel for the defendants in the case in the Central District of California, to whom the government had supplied copies of the logs of the North Michigan Avenue bugging. They stated, however, that, by virtue of a protective order sought and obtained by the government

in that case, they were forbidden to disclose to us any of the contents of the logs.

3. The government, while it disclosed to petitioner Balistrieri the three buggings referred to in his petition for certiorari, never disclosed to him the North Michigan Avenue bugging. The Solicitor General, had he been aware of a fourth bugging at the time he filed the opposition to the petition for certiorari, would certainly have disclosed it to this Court. We assume, therefore, that, if petitioner was in fact overheard over the North Michigan Avenue bug, the Solicitor General was unaware of it.

CONCLUSION

Under the circumstances, we submit, it would be appropriate for the Court (1) to call upon the Solicitor General to file a response to this petition and, if the said response confirms the fact that petitioner was convicted without disclosure to him of all the instances in which he had been bugged, (2) to vacate the order denying the petition for certiorari, and (3) to issue the writ of certiorari and take such other and further action as it may deem proper.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

HAROLD UNGAR
Counsel for Petitioner.